IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Criminal Appeal No.134-DB of 1998
Date of decision: 25.04. 2007

Kamaljit Singh.

-----Appellant.

Vs.

State of Punjab.

-----Respondent.

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE H.S. BHALLA

Present: Mrs. Baljit Mann, Advocate
for the appellant.

Mr. H.S. Brar, DAG, Punjab
for the respondent.

Adarsh Kumar Goel, J.

The appellant challenges his conviction under Section 302 IPC, for which, he has been sentenced to undergo imprisonment for life and to pay fine of Rs.5,000/-, in default, to undergo further RI for one year.

Case of the prosecution is that Charan Singh (PW-3) lodged FIR (Ex.PE/2), to the effect that Gurmit Kaur, deceased, his sister, was married to the appellant Kamaljit Singh about five months prior to the occurrence, which took place on 21.5.1996. After the marriage, the accused used to quarrel with the deceased for dowry, but in spite of persuasion, harassment continued. On 20.5.1996, he received a message from the deceased through Kashmir Singh (PW-5) that he should meet her as her husband was beating her. He along

with his maternal uncle Gurmit Singh (PW-4) went to the house of the accused. The accused threatened that if they did not meet his demands for dowry, they will have to face the consequences. After taking meals, they went to their beds in the courtyard. The accused and the deceased went to their beds in a separate room. At 1.00 A.M., in the night, they heard shrieks and saw in the light, after pushing open the door, that the accused had strangulated the deceased by putting the chunni around her neck. They tried to rescue the deceased, but the deceased breathed her last. The accused fled away from the spot. Charan Singh went to his village and after taking his father Sant Singh with him came back and was proceeding to the police station when they met Avinderbir Singh (PW-9) SHO on the way. PW-9 Avinderbir Singh recorded the statement of Charan Singh at 7.55 P.M. on 21.5.1996.

PW-9 Avinderbir Singh went to the place of occurrence, prepared inquest report, sent the dead body for post-mortem, recorded the statements of the witnesses and arrested the accused. Thereafter, investigation was transferred to SI Joga Singh. After completion of investigation, the accused was sent up for trial.

The prosecution examined Hari Singh (PW-2), Charan Singh (PW-3), Gurmit Singh (PW-4), Kashmir Singh (PW-5), MHC Nika Ram (PW-6), HC Balwant Singh (PW-7), Constable Baljit Singh (PW-8) and SI Avinderbir Singh (PW-9).

In his statement under Section 313 Cr.P.C., the accused denied the prosecution allegations and took the plea that in the morning his wife had gone to answer the call of nature and some

unknown person committed rape with her and threw her in a ditch. In the morning, after search, her dead body was brought to the house and Charan Singh and Gurmit Singh were summoned from the village, but they falsely implicated the accused. In his defence, he examined Kesar Singh (DW-1) and Amrik Singh (DW-2).

After considering the evidence on record, the trial Court convicted the appellant. It was held that presence of PW-3 Charan Singh and PW-4 Gurmit Singh was not unnatural and was corroborated by Kashmir Singh (PW-5). The defence was not probable. According to medical evidence, the death was on account of strangulation and there was no other mark of injury on the body of the deceased which negatived the theory of rape. No suggestion was given to PW-1 Dr. Raman Aggarwal that rape could have been committed.

Learned counsel for the appellant mainly submitted that there was gross delay in lodging of the FIR and presence of PWs was not believable. If they had seen the occurrence, they would have intervened to save the deceased and would have promptly lodged the FIR or at least informed others in the village. It was next submitted that in any case, offence would fall under Section 304-B IPC and not under Section 302 IPC.

Learned counsel for the State supported the conviction and sentence of the appellant.

We have considered the rival submissions and perused the record.

It stands established on record that death of Gurmit Kaur took place in the early hours of 21.5.1996. The dead body of the deceased was found in the house of the accused by the Investigating Officer Avinderbir Singh (PW-9). According to Dr. Raman Aggarwal (PW-1), the death was by strangulation and neck marks were ante mortem in nature. He denied that death could be on account of hanging. The nature of injuries has been described as under:-

> "Rigor mortis present. Post mortem staining present on the dependent parts of the body. Mouth open, eyes semi open, face was puffy and congested (including the neck). On retracting the eyelids, the conjunctiva of both eyes congested. Blood coming out of both the nostrils. An irregular reddish blue ligature mark of 6 cm width present at the lowest part of the neck and encircling the neck horizontally just above the suprasternal notch. Two irregular abrasions measuring 4 cm x 2 cm present on the left side of the neck just above the ligature mark on the middle and lateral side of neck, 4.5 cm below the left mastoid process. On dissection the underlying subcutaneous tissues and muscles below the ligature mark markedly congested and clotted blood present just below the thyroid cartilage. Brain was congested. Both pleura congested. Larynx and trachea congested. Both lungs congested. External organs of regeneration heatlthy. In the internal organs uterus pregnant of 18 to 20 week size. On opening the uterus intact placenta and male foetus with well developed foetal parts present. Cervix closed."

Statement of the accused under Section 313 Cr.P.C. is that the deceased was thrown in a ditch by some unknown person after committing rape and he brought the dead body to the house.

Plea of rape and murder by unknown person, is not probable in view of medical evidence. According to report of the Forensic Science Laboratory (Ex.PM), the chunni recovered from around the neck of the deceased had human blood. From the circumstances, it can be safely held that the deceased was murdered in the house of the accused. The accused has not disputed his presence in the house at the time when murder took place. It also stands established by the testimony of PW-5 Kashmir Singh, who is husband of cousin of the deceased, that the deceased was unhappy soon after the marriage and was being harassed and tortured for demand of dowry. One day prior to the occurrence, he had met the deceased and she had told him that she was being harassed for dowry and that he should convey the message to her parents. He conveyed the message to the parents of the deceased. The circumstances of the deceased being in the company of the appellant, her having been harassed immediately before the occurrence, recovery of dead body from the house of the appellant and presence of the appellant in his house are categorical circumstances, which form complete chain and exclude all possibilities of innocence of the appellant. False plea of the appellant is an additional link in the chain of circumstances.

In view of above circumstances, the question is whether the plea of the appellant that testimony of PW-3 Charan Singh and PW-4 Gurmit Singh, that they had seen the occurrence, is doubtful, as they lodged the FIR after 18 hours of the occurrence and on that account, conviction of the appellant should be set-aside.

We are unable to answer this question in positive.

When circumstances unhesitatingly prove the guilt of the accused, his conviction cannot be set-aside merely on the ground that veracity of ocular version was open to doubt. Man may tell lie, circumstances do not. Once guilt of the accused is proved beyond reasonable doubt by circumstances, oral evidence which is corroborative cannot be thrown out by raising suspicion on the presence of an eyewitness.

We may make reference to the relevant observations of the Hon'ble Supreme Court clearly laying down that when circumstances are clearly established and are conclusive of guilt of an accused and exclude every hypothesis, but the one of the guilt, such circumstances may be made the basis of conviction

In ***Hanumant Govind Nargundkar and another*** **v.** ***State of Madhya Pradesh*** AIR 1952 SC 343, it was observed:-

> "10. …….It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show

> that within all human probability the act must have been done by the accused….."

The above principles have been reiterated in subsequent judgments and it is not necessary to mention all the said judgments. Reference may only be made to the judgment of the Hon'ble Supreme Court in ***State of U.P*. v. *Hari Mohan*** AIR 2001 SC 142.

In **Ganesh Lal v. *State of Rajasthan*** 2002(1) SCC 731, it was observed:-

> "19. .....The availability of the abovesaid pieces of incriminating circumstantial evidence and their having remained totally unexplained forge a complete chain of incriminating circumstantial evidence so as to fasten guilt upon the accused beyond any reasonable doubt. The silence of the accused supplies the missing link, if any, as held by this Court in the case of *State of Maharashtra* v. *Suresh....."*

In ***State of U.P. v. Ramesh Prasad Misra and another*** AIR 1996 SC 2766, the wife of the accused was killed and the accused was convicted by the trial Court, but acquitted by the High Court. On the plea of blind murder and his absence from the house. Disapproving the said view, it was observed that falsity of defence version should have been appreciated by the High Court. Relevant observations are:-

> "**8**.....He did not exhibit normal human conduct of an innocent man, i.e., he should have been shocked to hear

the news of the death of his young wife, married just five months back and an expectant mother of his child, in his absence. He should have rushed home to find out the cause for the death and search out whether the crime was for gain etc. and immediately swing into action and make the police investigate into the crime. On the other hand, although he had the news at 11 a.m. he went to the police station at 2.10 p.m. after finding no escape from further delaying the reporting to the police of the crime. This conduct is inconsistent and incompatible with normal human behaviour of an innocent man but seems to be one of a clever demeanour....."

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"**11**. .....The learned Judges have also failed to consider the moot question whether the defence version that the murder of Urmila was committed by some unknown person in the bedroom of the deceased on that fateful night, was at all probable and acceptable. This part of the case has been totally left out of consideration by the learned Judges. If all the circumstances are read together, the only inevitable conclusion that could be reached is that the first respondent alone has committed the offence of the murder of his wife and screened the offence of murder so as to escape from the clutches of law....."

In ***State of Andhra Pradesh v. Gangula Satya Murthy*** AIR 1997 SC 1588, it was observed:-

"**21.** The fact that the body of (Satya Vani) was found on the cot inside the house of the respondent is a very telling circumstance against him. The respondent owed a duty to explain as to how a dead body which was resultant of a

homicide happened to be in his house. In the absence of any such explanation from him the implication of the said circumstance is definitely adverse to the respondent."

Coming to the plea of delay in lodging the FIR, it is well-settled that mere delay in lodging the FIR cannot be held to be fatal to the case of the prosecution. Delay may put the Court on guard to clearly weigh the reliability of the evidence.

In ***Tara Singh and others v. The State of Punjab*** AIR 1991 SC 63, it was observed:-

"**4.** It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report. Of course the Supreme Court as well as the High Courts have pointed out that in cases arising out of acute factions there is a tendency to implicate persons belonging to the opposite faction falsely. In order to avert the danger of convicting such innocent persons the courts are cautioned to scrutinise the evidence of such interested witnesses with greater care and caution and separate grain from the chaff after subjecting the evidence to a closer scrutiny and in doing so the contents of the FIR also

> will have to be scrutinised carefully. However, unless there are indications of fabrication, the court cannot reject the prosecution version as given in the FIR and later substantiated by the evidence merely on the ground of delay..."

As regards the plea that case falls under Section 304-B IPC, we are of the view that merely because offence may also be under Section 304-B IPC, does not affect conviction for offence under Section 302 IPC. It is clearly established that offence of murder has been committed by the appellant.

In view of above circumstances, we are of the view that conviction and sentence of the appellant are justified. Case of the prosecution is fully proved.

The appeal is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

April 25, 2007 **(H.S. BHALLA)**
ashwani **JUDGE**